86-1178

Supreme Court, U.S.
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NO. _____

UNITED STATES SUPREME COURT

October Term, 1986

CLAY W. DIPPEL,	)	
	)	Missouri Supreme Court
Pltf.-App.,	)	Cause No. 63638
	)	Missouri Court of Appeals,
vs.	)	Eastern District,
	)	Appellate No. 50279
TACO BELL CORP.,	)	Circuit Court, City of St. Louis
	)	Cause No. 812-09572
Def.-Resp.	)	

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

APPELLANT'S JURISDICTIONAL STATEMENT

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In The

UNITED STATES SUPREME COURT

CLAY W. DIPPEL,	United States Supreme Court
	Cause No. _____
Pltf.-App.,	Missouri Supreme Court
	Cause No. 63638
vs.	Missouri Court of Appeals,
	Eastern District,
TACO BELL CORP.,	Appellate No. 50279
	Circuit Court, City of St.
Def.-Resp.	Louis, Cause No. 812-09572
	October Term, 1986

JURISDICTIONAL STATEMENT

(a) Questions Presented

1. Did Plaintiff have a "vested right" in a punitive damages award after a unanimous jury verdict and entry of judgment?

2. May an amendment to a statute be applied retroactively without express intention of the legislature after case law established for 3 years that this statutory amendment was not retroactive?

3. Is Missouri Service Letter Statute, Section 290.140, R.S.Mo. 1982, as applied, in violation of the 14th Amendment due process clause, and thereby unconstitutional, when the Missouri Supreme Court reverses itself?

(b) List of Parties

The original Plaintiff, Clay W. Dippel, and the original Defendant, Taco Bell, are still the same in the suit. Since 28 U.S.C. Section 2403(b) may be applicable, service shall be made on the attorney general of the State of Missouri.

(c) Table of Contents and Table of Authorities

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Mo. Ann. Stat., Sec. 290.140 (Vernon 1982). [1, 7, 10, 11, 16, 20, 21, 25]

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28 U.S.C., Sec. 2101(c) (1948). [5, 10]

(d) Reference to Opinions Delivered In The Court

The case was filed in the Circuit Court of the City of St. Louis, Cause No. 812-09572. The final amended judgment was entered on June 10, 1985. Appeal was made to the Missouri Court of Appeals, Eastern District, Appellate No. 50279. Opinion was filed on July 22, 1986. Transfer to the Missouri Supreme Court was denied on October 14, 1986, based upon the decision in Vaughan v. Taft Broadcasting Co., 708 S.W.2d 656 (Mo.banc 1986).

(e) Statement of Grounds of Jurisdiction

The Supreme Court of Missouri denied transfer to the action on October 14, 1986. The Notice of Appeal was filed January 9, 1987. It was filed in the Supreme Court of Missouri, and the Missouri Court of Appeals, Eastern District. This appeal is filed within the time limits specified in 28 U.S.C. Section 2101(c). In this case, a statute of Missouri

has been applied in violation of the 14th Amendment of the United States Constitution. Therefore, the Court is granted jurisdiction under 28 U.S.C. Section 1257(2).

(f) Constitutional Provisions and Statutes Involved

Mo. Const., Art. I, Sec. 13 (1945)

"13. **Ex post facto laws--impairment of contracts--irrevocable privileges**

Section 13. That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

Mo. Ann. Stat. Sec. 290.140 (Vernon 1982)

"290.140. **Letter of dismissal, when--failure to issue, damages--punitive damages, limitations**

1. Whenever any employee of any corporation doing business in this state and which employs seven or more employees, who shall have been in the service of said corporation for a period of at least ninety days, shall be discharged or voluntarily quit the service of such corporation and who thereafter within a reasonable period of time, but not later than one year following the date the employee was discharged or voluntarily quit, requests in writing by certified mail to the superintendent, manager or registered agent of said corporation, with specific

reference to the statute, it shall be the duty of the superintendent or manager of said corporation to issue to such employee, within forty-five days after the receipt of such request, a letter, duly signed by such superintendent or manager, setting forth the nature and character of service rendered by such employee to such corporation and the duration thereof, and truly stating for what cause, if any, such employee was discharged or voluntarily quit such service.

2. Any corporation which violates the provisions of subsection 1 of this section shall be liable for compensatory but not punitive damages but in the event that the evidence establishes that the employer did not issue the requested letter, said employer may be liable for nominal and punitive damages; but no award of punitive damages under this section shall be based upon the content of any such letter.
(Amended by L. 1982, p. 511, par. 1.)

1982 Amendment. Divided the section into subsecs. 1 and 2; in subsec. 1 inserted "and which employs seven or more employees, who shall have been in the service of said corporation for a period of at least ninety days" following "this state", insreted "and who thereafter within a reasonable period of time, but not later than one year following the date the employee was discharged or voluntarily quit, requests in writing by certified mail to the superintendent, manager or registered agent of said corporation with specific reference to the statute" following "such corporation", deleted "for a period of at least ninety days" following "said corporation", inserted "within forty-five days after the receipt of such request" following "such employee", substituted "was discharged or voluntarily quit such service" for "as quit such service; and if any such superintendent or manager shall fail or refuse to issue such

letter to such employee when so requested by such employee, such superintendent or manager shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any sum not exceeding five hundred dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment"; added subsec. 2."

Mo. Ann. Stat. Sec. 1.170 (Vernon 1957)

"1.170. Repeal of law not to affect rights acquired thereunder

The repeal of any statutory provision does not affect any act done or right accrued or established in any proceeding, suit or prosecution, had or commenced in any civil case previous to the time when the repeal takes effect; but every such act, right and proceeding remains as valid and effectual as if the provisions so repealed had remained in force. (R.S.1939, par. 660, as amended L. 1957 p. 587 par. 1)"

Mo. Ann. Stat. Sec. 1.180 (Vernon 1957)

"1.180. Actions pending, how affected by repeal of law

No action or plea, pending at the time any statutory provisions are repealed, shall be affected by the repeal; but the same shall proceed, in all respects, as if the statutory provisions had not been repealed, except that all proceedings had after the repeal becomes effective are governed by procedural rules and laws then in effect, insofar as they are applicable. (R.S.1939, Sec. 662, as amended L.1957 p. 587 Sec. 1)"

U.S.C.A. Const.Amend.14 Sec. 1

AMENDMENT XIV.

"1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. Sec. 1257(2) (1970)

"1257. State courts; appeal; ceriorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

28 U.S.C. Sec. 2101(c) (1948)

"2101. Supreme Court; time for appeal or certiorari; docketing; stay

(c) any other appeal or writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within

ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

(g) Statement of the Case

The Plaintiff, Clay W. Dippel, was in the employ of Defendant, Taco Bell. The Plaintiff was then fired from Taco Bell in July, 1981. On August 5, 1981 Ray A. Gerritzen, attorney for Plaintiff, sent a letter to Taco Bell quoting from and specifically referring to Missouri Service Letter Statute, Section 290.140 RSMo 1982. The letter was received by Taco Bell and answered by Mr. Andrew Banks, attorney for Taco Bell, on August 25, 1981. Bank's letter said Taco Bell fired Dippel because "it was in the best interest of the company". On August 31, 1981, Ray A. Gerritzen replied with another letter to Banks specifically advising that Banks' letter did not comply with the Missouri Service Letter Statute which specified that the company state truthfully for what cause, if any, Dippel was terminated. Mr. Banks then sent his reply

letter of September 4, 1981 stating the company will be providing no further information.

Plaintiff, Clay W. Dippel, filed suit against Defendants Taco Bell and its regional manager, Ron Ayala, on September 25, 1981. Missouri Service Letter Statute Section 290.140 RSMo. 1978, was amended August 13, 1982. In 1983, it was judicially held the amendment to Missouri service letter statute Section 290.140 RSMo. 1982, would not be applied retroactively to bar a punitive damage award in a suit commenced prior to the effective date of the amendment.

Dippel filed suit on September 18, 1981 and on May 15, 1985, in the Circuit Court of the City of St. Louis, verdict and judgment was awarded to Plaintiff in the amount of $10,000.00 actual damages plus $50,000.00 punitive damages, with interest thereon as provided by law. Upon Taco Bell's subsequent Motion for Judgment Notwithstanding the Verdict Or, In the Alternative, to Amend the Judgment, the trial court, Judge Michael M.

Godfrey, reduced the actual damages of $10,000.00 to $1.00 nominal damages, but did not disturb the $50,000.00 punitive damages award to Plaintiff. That final amended judgment was entered on June 10, 1985. Notice of Appeal was filed by Taco Bell to the Missouri court of Appeals, Eastern District, on June 17, 1985.

After written briefs were filed and oral argument held in Dippel, the Missouri Supreme Court in Vaughan v. Taft Broadcasting Co., 708 S.W. 2d 656, on April 15, 1986, reversing earlier decisions, which held that punitive damages were recoverable if the service letter suit was filed prior to August 13, 1982. The question of retroactivity of the 1982 Amendment was not raised by Taco Bell in its post-trial motion, brief, or oral argument. It was first raised by Taco Bell's attorney's letter of May 27, 1986 to the Missouri Court of Appeals, enclosing a copy of the Missouri Supreme Court Vaughan opinion. On July 22, 1986, the Missouri Court of Appeals, Eastern District, affirmed the judgment of nominal

damages but reversed the judgment for punitive damages, relying upon the Vaughan decision. Dippel then timely applied for Transfer to the Missouri Supreme Court but was denied by the Missouri Supreme Court on October 14, 1986.

(h) Why so substantial as to require plenary consideration

The questions presented are so substantial as to require plenary consideration because:

1. The Missouri Supreme Court is going against the weight of authority throughout numerous jurisdictions in holding that a punitive damage award after judgment is not a "vested right".

Punitive damages are generally held not to be a private right of an individual. They are not to recompense the individual solely, but rather, they are allowed in the interest of society to deter similar conduct in the future. Smith v. Hill, 12 Ill. 2d 588, 147; N.E. 2d 321, 877, 73 ALR 2d 540 (1958). One who suffers an injury is entitled to a cause of action for actual damages, but a vested right to punitive damages arise only where a judgment has been allowed by a judgment in

in the interest of society or as a penalty.

There is numerous authority stating that a judgment is a "vested right". Some cases use this reasoning to deny recovery stating that a judgment hasn't been entered yet so there is no "vested right". Harden v. United States, 688 F. 2d 1025 (5th Cir., 1982). Beecher, et al v. Department of Transportation, 151 Ga. App. 355, 259 S.E. 2d 638 (1979). Kelly, supra; Smith, supra. There is authority also that use this rationale to uphold awards given in a judgment from being altered by retrospective application of a statute. Hooter v. Wilson, 256 S.W. 2d 808 (La.App.1972); Arnold, supra.

Black's law dictionary, 5th Edition (1979) defines "vested rights" in part:

> "In constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare.

> Such interests as cannot be interfered with by retrospective laws; interests which it is proper for state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice. American States Water Service Co. of California v. Johnson, 3 Cal.App.2d 606, 88 P.2d 770, 774."

In the present case, Plaintiff was awarded a judgment "according to the then current rules of law." In Arie v. Intertherm, Inc., 648 S.W. 2d 142 (Mo.App.1983), it was held that a punitive damage award in a case under the Missouri Service Letter Statute, Section 290.140 RSMo., 1982, after entry of a judgment, was a "vested right" which could not be taken away constitutionally by retroactive application of an amended statute. This was a judgment which was entered before the effective date of the amendment. But in State ex rel Deering v. Corcoran, 652 S.W.2d 228 (Mo.App.1983), it was held that the August 13, 1982 amendment to the service letter statute, precluding punitive damages did not apply to suits pending before the effective date of the amendment. Plaintiff in the case at bar filed suit September 18, 1981. This interpretation of the statutory amendment was followed by the

federal courts. Comerio v. Beatrice Foods Co., 595 F. Supp. 918 (E.D.Mo.1984). On May 15, 1985, judgment was entered for Plaintiff that included punitive damages. In November, 1985, the Missouri Court of Appeals, Western District affirmed the holding in Deering. Boyle v. Vista Eyewear, Inc., 700 S.W. 2d 859 (Mo.App.1985). Deering and Arie were both appellate court decisions, but in both cases, application to transfer to the Missouri Supreme Court were denied. Accordingly, in the case at bar, Plaintiff had a judgment awarding punitive damages "according to the then current rules of law." Applying the overwhelming authority available then, Plaintiff had a "vested right" in his punitive damage award after judgment.

The Missouri Court of Appeals took away Plaintiff's "vested right" in his punitive damage award, citing Vaughan, supra, 11 months after judgment had been entered. In following, the Supreme Court of Missouri has a position contrary to the weight of authority with regard to the presence of a "vested

right" after judgment. Due to the importance of "vested rights", the clarity that is needed concerning what is a "vested right", and the disagreement between the jurisdictions with relation to "vested rights", review by the Supreme Court of the United States is imperative.

2. There is agreement among the various jurisdictions as to the general principle for the retroactive application of statutes. But there seems to be a confusion among the jurisdictions distinguishing remedies and procedure from substantive rights. Therefore, decisions are unsettled in various states. As a consequence, review by the United States Supreme Court with a clearer holding of when a statute should be applied retroactively is necessary.

The general principles governing retroactive application seem relatively settled. A general presumption prevails that statutes should not be given retroactive effect. Protection Mutual Insurance Co. v. Kansas City, 515 S.W. 2d 909, 912

(Mo.App.1977). In Brown v. Indemnity Insurance Co. of North America, 908 So. 2d 812 (La.App.2nd Cir. 1959), the court stated:

> "Notwithstanding the general rule that statutes are construed to operate prospectively only, in the absence of a clear legislative interest to the contrary, statutes relating only to remedies or works of procedure are generally held to operate retrospectively (unless such application would adversely affect substantive rights.)"

This same rationale, absent the portion of "adversely affecting substantive rights" is found in cases concerning Art. I, Sec. 13 of the Missouri Constitution (1945). Scheidegger v. Greene, 451 S.W. 2d 135 (Mo.1970), held "under Art. I, Sec. 13 of the Missouri Constitution, no statute retrospective in its operation can be enacted . . . No person may claim a vested right in any particular mode of procedure for the enforcement or defense of his rights, and where a new statute only deals with procedure it applies to all actions including those pending or filed in the future."

All previous opinions concerning the Missouri Service Letter Statute held that it

wasn't the intention of the legislature to retroactively apply the amendment, and therefore, held it was not retroactive. Corcoran, supra, and Boyle, supra. The basis of not applying the amendment was the Missouri General Savings Statutes, Mo. Ann. Stat. Sec. 1.170 (1957) and Mo. Ann. Stat. Sec. 1.180 (1957). In Protection Mutual Insurance Co., supra, the court held:

> "Whenever the legislature repeals an existing statute it is considered to have done so in contemplation of the general savings clause as in Section 1.170 and 1.180, and unless the legislature specifically makes the re-enacted statutes retroactive, it is presumed that the savings clauses hereinabove stated are to be incorporated by reference with the same effect as if the repealing statute contained its own special savings clause."

Missouri Revised Statutes Section 1.170 and 1.180 were viewed as controlling in Arie, Corcoran, and Boyle, supra. The controlling aspect of these two general savings statutes was clearly annunciated in Comerio, supra. The court stated:

> "The amendment to the statute did not contain an express 'repealer' clause and therefore its retroactive effect is governed by the savings clauses in Missouri Revised Statutes Section 1.170 and 1.180

(1978). Musselman v. Anheuser Busch, Inc., 657 S.W. 2d 282, 285 (Mo.App.1983); Arie v. Intertherm, Inc., 648 S.W. 2d 142, 159 (Mo.App.1983). Under these savings clauses, the amendment did not affect 'acts done prior to August 13, 1982, but it applies to actions filed after said date."

Thus, in the case at bar, the Missouri Supreme Court reversed all prior case law. It then used this reversed holding to take a punitive damage award after entry of judgment by retroactively applying Missouri Service Letter statute Section 290.140 RSMo. 1982 to the case at bar.

This decision also is a reversal of the holding with reference to Art. I, Section 13 of the Constitution of Missouri (1945). In State ex rel St. Louis--San Francisco Railway v. Buder, 515 S.W.2d 409 (Mo.banc.1974), the court held that Art. I, Section 13 prohibited retrospective application of laws affecting substantive or vested rights. The general principle for retroactive application would require clear intent of the legislature for retroactive application and no affect on a "vested right". Harden, supra. In this case, there was no clear intent of the legislature

and there was an affect on a "vested right".

This case deals with a reversal of an interpretation of the retrospective intent of the legislature. A similar case is Beecher, supra. While that case was pending, the Supreme Court of Georgia reversed an earlier decision concerning expenses of litigation and attorney fees. The trial judge denied recovery of the expense and attorney fees in Beecher as the Supreme Court of Georgia holding came before the judgment. The court in Beecher stated, "verdict for the additional items had not ripened into a 'vested right' which could survive that ruling." It then continued to state that had the ruling come down after judgment, "the claim for the additional items would have become a 'vested right' and insulated from that ruling." Dept. of Transportation v. Kindrichs, 150 Ga.App. 9, 256 S.E. 2d 610 (1979); Housing Authority v. Southern R. Co., 150 Ga. App. 4, 256 S.E.2d 606 (1979). This decision is directly in conflict with the case at hand. Since "vested rights" are protected by the United States

Constitution, it is of extreme importance that the Supreme Court of the United States clarifies when "vested rights" may be abrogated by judicial retrospective application of a statute.

3. The destruction of a "vested right" is a violation of the due process clause of the Fourteenth Amendment, U.S.C.A. Const. Amend. 14, Sec. 1. "A right of action may be vested, and if so, it become property of him in whom it is vested, and the destruction of such a vested right is a violation of the due process clause of the 14th Amendment." Barr v. Preskitt, 389 F. Supp. 496 (1975); Gibbes v. Zimmerman, 290 U.S. 326, 54 S. Ct. 140, 78 L.Ed. 342 (1933); Graham v. Goodwell, 282 U.S. 409, 51 S.Ct. 186, 75 L.Ed. 415 (1930); Forbes Pioneer Boat Line v. Everglades Drainage Dist., 258 U.S. 338, 42 S.Ct. 325, 66 L.Ed. 647 (1922). In the case at hand, Plaintiff was deprived of his vested right not in a cause of action, but in a judgment by the Supreme Court reversing itself.

A state legislature can't take away a

"vested right" in a punitive damage award after judgment by retroactively applying a statute. Following logical reasoning then, a state Supreme Court should not be able to reverse itself and retroactively apply a statutory amendment to take away a "vested right" in a punitive damage award after judgment. This is especially true when almost three years of case law established that the statutory amendment was not retroactive. This reasoning is found by implication in Beecher, supra. This solidification of this principle by the United States Supreme Court is now necessary.

(j) Appendix

(i)

IN THE MISSOURI COURT OF APPEALS

EASTERN DISTRICT

Division One

CLAY W. DIPPEL,	) No. 50279
Plaintiff-Respondent,	) Appeal from the Circuit Court of the City of St. Louis
vs.	) Hon. Michael F. Godfrey, Judge
TACO BELL CORP.,	)
Defendant-Appellant.	) OPINION FILED
	) July 22, 1986

Clay W. Dippel (employee) sued his former employer Taco Bell Corp. alleging violation of Sec. 290.140 RSMo. 1978, the service letter statute. The jury returned a verdict awarding employee $10,000.00 compensatory and $50,000.00 punitive damages. After various post-trial motion, the trial court left intact the award of punitive damages, but set aside the compensatory damages and awarded, instead, $1.00 nominal damages. Taco Bell appeals, challenging only the award of punitive damages. The judgment for nominal damages is affirmed; the judgment for punitive damages is reversed.

In Taco Bell's sole point on appeal it asserts the issue of punitive damages was not a jury question because the evidence failed to show Taco Bell knowingly and intentionally supplied a deficient service letter to employee and therefore employee failed to make a submissible case on punitive damages.

While this appeal was pending, the Missouri Supreme Court handed down Vaughan v. Taft Broadcasting Co., 708 S.W. 2d 656 (Mo. banc

1986), which addressed directly the issue of punitive damages under the service letter statute. In Vaughan, plaintiff filed his action in April 1980. Judgment in his favor awarding him both actual and punitive damages under the service letter statute was entered in November 1983.

Before the judgment was entered, Sec. 290.140 of the service letter statute was amended, effective August 13, 1982, to permit the award of punitive damages only when there is evidence that the employer failed to furnish a service letter when an employee requests one. The amendment also directs that no award of punitive damages shall be based upon the content of any such letter.

Defendant in Vaughan appealed, asserting among other things, that the trial court's submission of an instruction on punitive damages was erroneous because the service letter statute as amended specifically denied the recovery of punitive damages where the letter had been supplied.

Plaintiff responded that the amended

statute did not apply because his cause of action accrued and his case was filed prior to August 13, 1982, the effective date of the amended service letter statute. Plaintiff relied upon State ex rel. Deering v. Corcoran, 652 S.W. 2d 228 (Mo. App. 1983) to support his position. In Deering, this court held that the 1982 amendment to the service letter statute did not preclude punitive damages in a suit commenced before the effective date of the amendment but in which no judgment had been entered before the effective date of the statute. Id. at 230.

The Missouri Supreme Court rejected plaintiff's position and expressly stated that "the holding in Deering and any cases relying upon Deering, should no longer be followed". Vaughn, 708 S.W. 2d at 661. The Supreme Court concluded that the trial court erred in submitting a punitive damages instruction to the jury; that plaintiff could not recover punitive damages because he had no vested right to such damages at the time the 1982 statute became effective. Id. at 660.

Employee filed his action against Taco Bell prior to August 13, 1982, the effective date of the amendment to the service letter statute. The judgment awarding employee punitive damages, however, was not entered until May 15, 1985, followed by amendments of the judgment on June 7 and June 10, 1985.

Although the trial court could not have been aware of the holding in Vaughan and this case was appealed to this court prior to Vaughn, Vaughan is controlling. An appellate court must decide a case on the basis of the law in effect at the time of the decision. Sturgess v. Guerrant, 583 S.W.2d 258, 262 [1] (Mo. App. 1979).

Respondent's motion to dismiss the appeal and motion for damages for frivolous appeal which were taken with the case are denied.

The judgment for nominal damages is affirmed; the judgment for punitive damages is reversed.

SS/Robert O. Snyder
ROBERT O. SNYDER, JUDGE

SS/Gerald M. Smith
GERALD M. SMITH, JUDGE

Concurs

SS/Carl R. Gaertner
CARL R. GAERTNER, PRESIDING JUDGE

Concurs

(ii)

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

Wednesday, May 15th, 1985

Clay W. Dippel,	) Cause No. 812-09572
Plaintiff,	) Division No. 6
-vs-	)
Taco Bell, a Corporation, and Ron Ayala,	)
Defendants.	)

JUDGMENT

This action came on for trial before the Court and a jury, the parties appearing by their respective attorneys, and the issues having been duly tried and the jury having duly rendered its verdict.

Wherefore, it is considered and adjudged by the Court that the plaintiff, Clay W. Dippel have and recover of the defendant, Taco Bell, a Corporation, the sum of TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS for damages and FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS for punitive damages, with interest thereon as provided by law, together with the costs of

this proceeding and that execution issue therefor.

Whereas on May 14th, 1985 the Court sustained defendant, Ron Ayala's motion for a directed verdict as to Count II of the petition.

Wherefore, it is further considered and adjudged by the Court that the plaintiff, Clay W. Dippel take nothing by reason of his cause of action as to Count II of the petition against defendant, Ron Ayala, that the Defendant, Ron Ayala be discharged and go hence without day as to said cause of action.

SS/Michael F. Godfrey
Judge

May 31, 1985
Date approved

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

Friday, June 7, 1985

CLAY W. DIPPEL)
)
Plaintiff,)
) Cause No. 812-09572
vs.)

	)	Division No. 6
TACO BELL,	)	
A Corporation, and	)	
Ron Ayala,	)	
	)	
Defendants	)	

AMENDED JUDGMENT

In accordance with Rule 75.01 of the Supreme Court Rules, the judgment entered in this cause on Wednesday, May 15, 1985, hereby is amended in the following respect:

This action came on for trial before the Court and a jury, the parties appearing by their respective attorneys, and the issues having been duly tried and the jury having duly rendered its verdict.

Wherefore, it is considered and adjudged by the Court that the plaintiff, Clay W. Dippel have and recover of the Defendant, Taco Bell, A Corporation, the sum of One Dollar ($1.00) for damages and Fifty Thousand and no/100 ($50,000.00) Dollars for punitive damages, with interest thereon as provided by law, together with the costs of this proceeding and execution issue therefore.

Whereas on May 14, 1985, the Court

sustained defendant, Ron Ayala's motion for a directed verdict as to Count II of the petition, now therefore, judgment is hereby entered in favor of defendant, Ron Ayala and against plaintiff, Clay W. Dippel on Count II of plaintiff's First Amended Petition.

Wherefore, it is further considered and adjudged by the Court that the plaintiff, Clay W. Dippel take nothing by reason of his cause of action as to Count II of the said petition against defendant, Ron Ayala, and that the defendant, Ron Ayala be discharged and that he go hence without day as to said cause of action.

SO ORDERED:

SS/Michael F. Godfrey
Judge

June 7, 1985
Date

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

Friday, June 10, 1985

CLAY W. DIPPEL	)	
	)	
Plaintiff,	)	
	)	Cause No. 812-09572
vs.	)	
	)	Division No. 6
TACO BELL,	)	
A Corporation, and	)	
ron Ayala,	)	
	)	
Defendants.	)	

AMENDED JUDGMENT

In accordance with Rule 75.01 of the Supreme Court Rules, the judgment entered in this cause on Wednesday, May 15, 1985, and Friday, June 7, 1985, hereby further is amended in the following respect:

This action came on for trial before the Court and a jury, the parties appearing by their respective attorneys, and the issues having been duly tried and the jury having duly rendered its verdict.

Wherefore, it is considered and adjudged by the Court that the plaintiff, Clay W. Dippel have and recover under Count I of the First Amended Petition of the Defendant, Taco Bell, A Corporation, the sum of One Dollar ($1.00) for damages (Nominal) and Fifty Thousand and

no/100 ($50,000.00) Dollars for punitive damages, with interest thereon as provided by law, together with the costs of this proceeding and that execution issue therefor.

Whereas on May 14, 1985, the Court sustained defendant's motion for a directed verdict as to Count II of the petition, now therefore, judgment is hereby entered in favor of defendant, Ron Ayala and against plaintiff on Count II of plaintiff's First Amended Petition.

Wherefore, it is further considered and adjudged by the Court that the plaintiff, Clay W. Dippel take nothing by reason of his cause of action as to Count II of the said petition against defendants, Ron Ayala and Taco Bell, a Corporation, be discharged as to Count II and that they go hence without day as to said cause of action.

SO ORDERED:

SS/Michael F. Godfrey
Judge

June 10,, 1985
Date

Joe H. VAUGHAN,
Plaintiff-Respondent,

v.

TAFT BROADCASTING COMPANY,
Defendant-Appellant.

No. 67424.

Supreme Court of Missouri,
En Banc.

April 15, 1986.

Plaintiff, Joe Vaughan, sued Taft Broadcasting Company, owner of WDAF radio station, alleging violation of the service letter statute, section 290.140, RSMo 1978. The jury awarded plaintiff $1.00 in actual damages and $173,670.83 in punitive damages; the Court of Appeals, Western District, affirmed. This Court transferred the case to determine whether plaintiff can recover actual and punitive damages under the service letter statute. Judgment for actual damages affirmed; judgment for punitive damages reversed.

Appellant contends: (1) the trial court erred in submitting a punitive damages instruction because section 290.140(2), RSMo

Cum.Supp.1982, denies recovery for punitive damages; (2) the trial court erred in submitting a punitive damages instruction because there was not substantial evidence of malice; (3) the verdict for punitive damages was excessive and the result of bias and prejudice; (4) the jury verdict for punitive damages was improper because it resulted from an agreement to be bound by a quotient verdict; (5) the trial court erred in admitting a letter into evidence because it was prejudicial; (6) the trial court erred in denying defendant's motion for a directed verdict because there was insufficient evidence that the service letter did not correctly state the true cause of plaintiff's termination; and (7) the trial court erred in allowing defendant to argue as substantive evidence in closing argument deposition testimony used to refresh recollection.

Plaintiff was first employed by defendant in the summer of 1976 as a part-time employee filling in for various employees. Plaintiff was doing on-air broadcasting and had other duties connected with the radio station.

During this time, plaintiff received positive comments from management regarding his performance.

In May of 1978, plaintiff was offered a full-time position with WDAF. Plaintiff had been eager to become full time and immediately accepted the offer. Plaintiff's manager, Charles Gray, told him to keep quiet about becoming full time because the next person hired at WDAF needed to be black in order to meet EEOC requirements. In order to meet EEOC requirements, Gray prepared a recruitment source log detailing the twelve people he had interviewed for the position, even though the job had been filled. On June 16, 1978, Gray issued a memorandum stating, "After interviewing many applicants for the job, it became quite obvious that the best and most qualified candidate was right here in the building."

After becoming full time, plaintiff was not advised of any dissatisfaction with his performance. To the contrary, WDAF used plaintiff's coverage of a cave-in during

construction of the Hyatt-Regency Hotel to promote its radio station. In addition, WDAF filmed a television commercial touting its news staff, including plaintiff.

Defendant's FCC license was scheduled for renewal in 1980; its renewal application was to be filed by October 1979. Defendant understood that the FCC could use the station's EEO hiring practices to deny the license renewal and that hiring a black would help the station meet EEOC guidelines.

In November 1978, the Missouri Commission on Human Rights began an investigation into hiring practices at Kansas City radio and television stations. The Commission wished to meet with defendant's management; however, defendant refused to meet with the Commission until June 1979.

In February 1979, Ted Griffin, Executive Vice President of the Missouri Broadcasters Association (MBA), circulated a letter to all Kansas City MBA stations, including WDAF. The letter advised the stations that the Human Rights Commission planned to evaluate

employment practices and that although he had tried to convince the Commission there was no problem at the Kansas City stations, the Commission refused to back down from its investigation. Griffin also stated he though the broadcasters would have a problem at license renewal time.

On March 28, 1979, Gray told plaintiff that he was no longer employed at WDAF because Gray did not like his "air sound." Gray and David Martin, the general manager of WDAF, testified they decided to fire plaintiff in November of 1978 because he was performing inadequately. In December of 1978, Gray began recruiting Cecil Hickman, a black newsman with radio station KCMO. The effort to recruit Hickman failed initially; but after defendant increased the salary offer and guaranteed Hickman a raise in six months, he accepted the position. No other person on the staff had ever been offered a guaranteed pay increase. Gray documented his recruitment efforts in a memorandum to offer proof to the government that WDAF was trying to hire a black reporter.

Following his termination, plaintiff requested Gray to write a letter stating his employment to show a potential future employer. After an inadequate response by Gray and a second request by plaintiff, Gray wrote to plaintiff stating he would prefer to respond to specific inquiries from prospective employers. On June 4, plaintiff again wrote Gray and Martin requesting a letter setting forth the three areas covered by the service letter statute. On June 19, 1979, Gray wrote a letter stating that plaintiff had been employed by WDAF from June 19, 1978, to March 28, 1979. The letter listed plaintiff's duties and stated that he had been terminated because he had not adequately responded to emergency situations and that defendant was dissatisfied with plaintiff's performance of air duties.

Plaintiff filed his action in April of 1980 alleging defendant had not stated the true cause for his termination in the service letter. Judgment in his favor was entered in November of 1983.

Appellant asserts that the trial court erred in submitting an instruction on punitive damages because the service letter statute specifically denies recovery of punitive damages in plaintiff's situation.

The service letter statute was originally enacted in 1905 to remedy the evil of blacklisting of employees by railways and other corporations. Cheek v. Prudential Insurance Co., 192 S.W. 387 (Mo.1917). Although the statute itself did not specifically create a private cause of action in the employee, the court in Cheek reasoned that since the duty imposed by the statute was for the benefit of a class of individuals as well as the public good, a right of action would be given to any member of the class damaged by a breach of that duty. Id. at 389. Punitive damages could be awarded although the recovery of actual damages be nominal. State ex rel. St. Joseph Belt Railway Co. v. Shain, 341 Mo. 733, 108 S.W.2d 351, 356 (1937).

In 1982, section 290.140 was amended and reads as follows:

290.140. Letter of dismissal, when--failure to issue, damages--punitive damages, limitations.--1. Whenever any employee of any corporation doing business in this state and which employs seven or more employees, who shall have been in the service of said corporation for a period of at least ninety days, shall be discharged or voluntarily quit the service of such corporation and who thereafter within a reasonable period of time, but not later than one year following the date the employee was discharged or voluntarily quit, requests in writing by certified mail to the superintendent, manager or registered agent of said corporation, with specific reference to the statute, it shall be the duty of the superintendent or manager of said corporation to issue to such employee, within forty-five days after the receipt of such request, a letter, duly signed by such superintendent or manager, setting forth the nature and character of service rendered by such employee to such

corporation and the duration thereof, and truly stating for what cause, if any, such employee was discharged or voluntarily quit such service.

2. Any corporation which violates the provisions of subsection 1 of this section shall be liable for compensatory but not punitive damages but in the event that the evidence establishes that the employer did not issue the requested letter, said employer may be liable for nominal and punitive damages; but no award of punitive damages under this section shall be based upon the content of any such letter.

(Emphasis added.)

[1] Appellant contends the 1982 statute applies to this case and prevents an award of punitive damages. Respondent argues the 1982 statute does not apply because his cause of action accrued and his case was filed prior to the effective date, August 13, 1982, of the amended service letter statute.

Appellant contends that section 1.160, RSMo 1978, governs this issue because section

290.140 has been construed to be a penal statute. See Barrows v. Riss & Co., 238 Mo.App. 334, 179 S.W.2d 473 (1944); Walker v. St. Joseph Belt Railway Co., 102 S.W.2d 718 (Mo.App.1937). Section 1.160 provides:

1.160 Effect of repeal of penal statute.--No offense committed and no fine, penalty or forfeiture incurred, or prosecution commenced or pending previous to or at the time when any statutory provision is repealed or amended, shall be affected by the repeal or amendment, but the trial and punishment of all such offenses, and the recovery of the fines, penalties or forfeitures shall be had, in all respects, as if the provision had not been repealed or amended, except (1) that all such proceedings shall be conducted according to existing laws; and (2) that if the penalty or punishment for any offense is reduced or lessened by any alteration of the law creating the offense, the penalty or punishment shall be assessed according to the amendatory law.

(Emphasis added.)

Appellant submits the legislature knew,

when it amended the service letter statute, that by reducing a penalty by statutory amendment, the reduced penalty would, by virtue of section 1.160, be applied to all pending actions brought under the statute. State ex rel. Cole v. Nigro, 471 S.W.2d 933 (Mo.banc 1971). Section 1.160 governs the repeal or amendment of statutes relating to criminal offenses, not civil actions; therefore, section 1.160 has no application to an action brought under Missouri's service letter statute. Crompton v. Curtis-Toledo, Inc., 661 S.W.2d 645 (Mo.App.1983).

Appellant argues alternatively that the amended statute affects a remedy only and does not impair a substantive right; therefore, it should be applied retrospectively to plaintiff's case.

Under Article I, section 13 of the Missouri Constitution, no statute retrospective in its operation can be enacted. Scheidegger v. Greene, 451 S.W.2d 135 (Mo.1970). This provision does not apply, however to a statute dealing only with procedure or remedies. Id.

at 137. "No person may claim a vested right in any particular mode of procedure for the enforcement or defense of his rights, and where a new statute deals only with procedure it applies to all actions including those pending or filed in the future." Id. Nor does the federal constitution prevent a remedial or procedural provision from being applied retroactively because "although a vested cause of action is property . . ., the [plaintiff] has no property, in the constitutional sense, in any particular form of remedy; all that he is guaranteed by the Fourteenth Amendment is the preservation of his substantial right to redress by some effective procedure." Gibbes v. Zimmerman, 290 U.S. 326, 332, 54 S.Ct. 140, 142, 78 L.Ed. 342 (1933).

The issue, therefore, is whether the plaintiff had a vested right to punitive damages at the time the amended statute became effective.

[2] This Court finds that under Missouri law, punitive damages are remedial and a plaintiff has no vested right to such damages

prior to the entry of judgment. Arie v. Intertherm, Inc., 648 S.W.2d 142, 159 (Mo.App.1983). Punitive damages are never allowable as a matter of right and their award lies wholly within the discretion of the trier of fact. DeBow v. Higgins, 425 S.W.2d 135 (Mo.1968). The purpose of punitive damages is to inflict punishment and to serve as an example and deterrent to similar conduct. Polk v. Missouri-Kansas-Texas Railroad Co., 351 Mo. 865, 174 S.W.2d 176, 180 (1943); Arie, 648 S.W.2d at 159. The reasoning for finding punitive damages remedial and applying the statute retroactively was stated in Smith v. Hill, 12 Ill.2d 588, 147 N.E.2d 321, 327 (1958):

> The Act in barring punitive damages merely establishes a "public policy" that in the interest of society in the particular class of cases such damages should not be awarded. Such damages being allowed in the interest of society, and not to recompense solely the victim, to deny them cannot be said to deny any constitutional right or to

encroach upon any judicial function, or to violate any constitutional guaranty of separation of powers.

This Court concludes that the trial court erred in submitting a punitive damages instruction to the jury; plaintiff cannot recover punitive damages because he had no vested right to such damages at the time the 1982 statute became effective. See Louisville & N.R. Co. v. Street, 164 Ala. 155, 51 So. 306 (1909); American Bank & Trust Co. v. Community Hospital, 36 Cal.3d 359, 204 Cal.Rptr. 671, 683 P.2d 670 (1984); Teasley v. Mathis, 243 Ga. 561, 255 S.E.2d 57 (1979); Smith v. Hill, 12, Ill.2d 588, 147 N.E.2d 321 (Ill.1958); Jefferson Disposal Co., Inc. v. Parish of Jefferson, 603 F.Supp. 1125 (E.D.La.1985); Convention Center Inn, Ltd. v. Dow Chemical Co., 19 Ohio Misc.2d 15, 19 Ohio B.R. 422, 484 N.E.2d 764 (1984). See also Jasperson v. Purolator Courier Corp., 765 F.2d 736 (8th Circ.1985).

[3] Respondent relies upon State ex rel. Deering v. Corcoran, 652 S.W.2d 228

(Mo.App.1983), where the court held that the 1982 amendment to the service letter statute does not preclude punitive damages in a suit commenced before the effective date of the amendment but in which no judgment has been entered. Id. at 230. The court in Deering reasoned that if the legislature had intended retrospective application, it would have so specifically provided. Id. at 229. A statutory provision that is remedial or procedural, however, must be applied retrospectively unless the legislature expressly states otherwise. State ex rel. LeNeve v. Moore, 408 S.W.2d 47, 49 (Mo.banc 1966). In addition, the court in Deering concluded that the 1982 statute should be be applied retrospectively because sections 1.170 and 1.180, RSMo 1978, prevent pending actions from being affected by a repealing statute. Deering, 652 S.W.2d at 229. The conclusion reached in Deering is erroneous because sections 1.170 and 1.180 apply only if plaintiff has a vested right. Arie, 648 S.W.2d at 159. Therefore, the holding in

Deering and any cases relying upon Deering should no longer be followed.

[4] Appellant contends that the trial court erred in admitting into evidence the letter from Ted Griffin advising WDAF of his attempt to dissuade the Human Rights Commission from investigating the Kansas City stations. If proffered evidence is admissible for any purpose, it may not be excluded. Martin v. Mercantile Trust Co., 293 S.W.2d 319 (Mo.1956). The letter from Griffin was properly admitted to show defendant's notice of the pending investigation by the Human Rights Commission. Appellant argues that the letter contained prejudicial comments made by Griffin. The trial court did not err in admitting this letter because the statements urged as inflammatory are relevant to the notice defendant received of the seriousness of the investigation and its importance to the licensing process.

[5] Appellant contends there was insufficient evidence to support a finding by the jury that the service letter did not

correctly state the true cause of plaintiff's termination. The evidence offered was entirely circumstantial; however, the existence of only circumstantial evidence on a material issue is no bar to recovery of and by itself. McCarthy v. Wulff, 452 S.W.2d 164, 168 (Mo.1970). The circumstantial evidence must establish the desired inference with such certainty as to cause it to be the more reasonable and probable of the conclusions to be drawn. Jordan v. Robert Half Personnel Agencies, 615 S.W.2d 574, 587 (Mo.App.1981). In reviewing the trial court's decision, the evidence must be considered favorably to plaintiff, and defendant's evidence must be disregarded unless it tends to support the submission. Wright v. Fox-Stanley Photo Products, Inc., 639 S.W.2d 407, 408 (Mo.App.1982).

[6] It was plaintiff's position that he was terminated because WDAF felt the need to hire a black in order to satisfy the Commission's investigation and to present a favorable view of its hiring practices for use

in its license renewal application. A review of the facts shows that plaintiff made a submissible case and that the evidence was sufficient to allow the jury to infer beyond speculation that the true reason plaintiff was terminated was to make it possible to hire a black and not because of plaintiff's inadequate job performance.

Appellant asserts the trial court erred in allowing plaintiff's counsel to use David Martin's deposition testimony in closing argument as substantive evidence when the deposition was used only to refresh Martin's recollection. Defendant made no objection at the time of argument and the claim that the argument was improperly permitted is foreclosed from consideration. Mueller v. Storbakken, 583 S.W.2d 179, 186 (Mo.banc 1979).

Because of this Court's determination that the 1982 service letter statute applies in this case, there is no need to consider appellant's remaining contentions regarding the punitive damages.

Accordingly, this Court affirms the trial court's judgment awarding plaintiff $1.00 nominal damages and reverses and vacates the award of punitive damages.

All concur.

(iii)

No. 68638

ED 50279

IN THE SUPREME COURT OF MISSOURI

September Session 1986

Clay W. Dippel, Plaintiff-Respondent,

vs. TRANSFER

Taco Bell Corp., Defendant-Appellant.

Now at this day, on consideration of Plaintiff-Respondent's Application to transfer the above entitled cause from the Eastern District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI-SCT

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that

the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 1986, and on the 14th day of October, 1986, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 14th day of October, 1986.

SS/ Thomas F. Simon
Clerk

D.C.

(iv) The following Notice of Appeal was filed by mailing same in the United States mail, postage prepaid, First Class mail, on January 9, 1987 to the courts and attorney for Defendant-Respondent as herein specified.

In The

UNITED STATES SUPREME COURT

CLAY W. DIPPEL,	)	United States Supreme Court
	)	Cause No. _____
Pltf-App.,	)	Missouri Supreme Court
	)	Cause No. 63638
vs.	)	Missouri Court of Appeals,
	)	Eastern District,
TACO BELL CORP.,	)	Appellate No. 50279
	)	Circuit Court, City of St. Louis
Def.-Resp.	)	Cause No. 812-09572
		October, 1986 Term

NOTICE OF APPEAL
TO UNITED STATES SUPREME COURT

TO: Missouri Supreme Court
Supreme Court Bldg.
Jefferson City, MO 65102

Missouri Court of Appeals
Eastern District
111 N. 7th Street
St. Louis, MO 63101

Circuit Court
City of St. Louis
Hon. Michael F. Godfrey
c/o Division No. 6
Tucker & Market Streets
St. Louis, MO 63101

Attorney General of
the State of Missouri
Supreme Court Bldg.
Jefferson City, MO 65102

Mr. John R. McFarland
Attorney for Def.-Resp.
One Mercantile Ctr., Suite 2900
St. Louis, MO 63101

Under the provisions of Rules 10, 12, and 28.4.(c), you are hereby notified that Clay W. Dippel appeals to the United States Supreme Court from the Opinion of the Missouri Court of Appeals, Eastern District, dated July 22, 1986, from which application to transfer to the Missouri Supreme Court by Clay W. Dippel was denied by the Missouri Supreme Court October 14, 1986, which reversed outright a unanimous verdict and judgment for Plaintiff and against Defendant Taco Bell reduced by the trial court to $1.00 nominal damages plus $50,000.00 punitive damages. This appeal to the United States Supreme Court is under 28 U.S.C. 1257(2) within the time limits as specified under 28 U.S.C. 2101(c). 28 U.S.C., paragraph 2403(b) may be applicable.

GERRITZEN & GERRITZEN

By: _____

Ray A. Gerritzen #15967
Attorney for Pltf-App.
610 Locust Street
Suite 2072
St. Louis, MO 63101-1794
(314) 231-2786

BEST AV

I, Ray A. Gerritzen, being duly sworn upon my oath, state that all parties required to be served have been served and that the list of the names and address of those parties who were served consists of those names specified under "TO" at the beginning of this notice and that service was made by depositing in a United States postal mailbox, with First-Class postage prepaid, and properly addressed to the clerk of the United States Supreme Court as well as all of the parties specified above, within the time allowed for filing, namely on January 9, 1987.

RAY A. GERRITZEN

Subscribed and sworn to before me this 9th day of January, 1987.

My Commission Expires:

Notary Public

AILABLE COPY

In The

UNITED STATES SUPREME COURT

October Term, 1986

CLAY W. DIPPEL,	) United States Supreme Court
	) Cause No. _____
Pltf.-App.,	) Missouri Supreme court
	) Cause No. 63638
vs.	) Missouri Court of Appeals,
	) Eastern District,
TACO BELL CORP.,	) Appellate No. 50279
	) Circuit Court, City of St. Louis
Def.-Resp.	) Cause No. 812-09572

CERTIFICATE OF MAILING TO THE
CLERK OF THE UNITED STATES SUPREME COURT

I, Herbert B. Roberts, being duly sworn upon my oath, state that I am a member of the Bar of the United States Supreme Court and that to my knowledge forty (40) copies of the Jurisdictional Statement of Appellant, in the case of Clay W. Dippel v. Taco Bell Corp., were timely filed by mailing same addressed to the Clerk, United States Supreme Court, 1 First Street, N.E., Washington, D.C. 20543, on Monday, January 12, 1987, at approximately 3:00 p.m., at the United States Post Office, 9th and Olive Streets, St. Louis, Missouri, with First-Class postage prepaid and that January 12, 1987 was within 90 days of the

Missouri Supreme Court Denial of Transfer

Ruling of October 14, 1986.

HERBERT B. ROBERTS
Attorney at Law
611 Olive, Suite 2067
St. Louis, MO 63101

Subscribed and sworn to before me this 12th day of January, 1987.

My Commission Expires:

March 23, 1987

Notary Public

In The

UNITED STATES SUPREME COURT

October Term, 1986

CLAY W. DIPPEL,	) United States Supreme Court
	) Cause No. _____
Pltf.-App.,	) Missouri Supreme Court
	) Cause No. 63638
vs.	) Missouri Court of Appeals,
	) Eastern District,
TACO BELL CORP.,	) Appellate No. 50279
	) Circuit Court, City of St. Louis
Def.-Resp.	) Cause No. 812-09572

PROOF OF SERVICE

I, Ray A. Gerritzen, being duly sworn upon my oath, state that all parties required to be served with the Jurisdictional Statement have been served by mailing a separate copy to each person on the hereinafter stated list, by depositing same in the United States Post Office, 9th and Olive Streets, St. Louis, Missouri, with First-Class postage prepaid at approximately 3:00 p.m. on January 12, 1987:

Missouri Supreme Court
Supreme Court Bldg.
Jefferson City, MO 65102

Missouri Court of Appeals
Eastern District
111 N. 7th Street
St. Louis, MO 63101

Circuit Court
City of St. Louis
Hon. Michael F. Godfrey
c/o Division No. 6
Tucker & Market Streets
St. Louis, MO 63101

Attorney General of
the State of Missouri
Supreme Court Bldg.
Jefferson city, MO 65102

Mr. John R. McFarland
Attorney for Def.-Resp.
One Mercantile Ctr., Suite 2900
St. Louis, MO 63101

RAY A. GERRITZEN

Subscribed and sworn to before me this 12th day of January, 1987.

My Commission Expires:
July 11, 1989

Notary Public

GERRITZEN & GERRITZEN

By: _____
Ray A. Gerritzen #15967
Attorney for Pltf.-App.
610 Locust Street
Suite 2072
St. Louis, MO 63101-1794
(314) 231-2786

AVAILABLE COPY